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**BAYPORT MARINA PLAZA LLC**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK CONNALLY, an individual; and  
DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION, SERVICES: HELPING YOU  
HELP OTHERS, a California public benefit  
corporation,

Plaintiffs,

BAYPORT MARINA PLAZA LLC, a limited  
liability company,

Defendant.

Case No: C-07-3032-BZ

**ANSWER TO COMPLAINT FOR  
INJUNCTIVE RELIEF AND DAMAGES  
AND DEMAND FOR JURY TRIAL**

**Magistrate Judge Bernard Zimmerman**

COMES NOW Defendant BAYPORT MARINA PLAZA LLC ("Defendant") in answer  
to the Complaint of Plaintiffs PATRICK CONNALLY, an individual; and DISABILITY  
RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS  
("DREES"), as follows:

1. With respect to Paragraph 1 of the Complaint, Defendant is unable to admit or  
deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
material factual allegations, but rather argument. As such, the averments of this paragraph are  
denied.

2. With respect to Paragraph 2 of the Complaint, Defendant is unable to admit or  
deny the averments set forth in this paragraph as it lacks sufficient information to allow the

1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied. However, based upon that information currently available, Defendant admits that  
4 Plaintiff PATRICK CONNALLY attended a mediation on or about March 20, 2007, which took  
5 place at the BAYPORT MARINA PLAZA ("Subject Property"), located at or near 643 Bair  
6 Island Road, Suite 400, Redwood City, CA 94063. Defendant further admits that at least part of  
7 the Subject Property qualifies as a public accommodation and/or public facility. Defendant has,  
8 at all relevant times, believed that the Subject Property is handicap accessible. Defendant is  
9 currently evaluating whether there are any genuine accessibility issues at the Subject Property.

10 3. With respect to Paragraph 3 of the Complaint, Defendant admits that this Court  
11 has federal jurisdiction of this action regarding the alleged violation of the ADA. Any and all  
12 other allegations that may be contained in this paragraph are denied.

13 4. With respect to Paragraph 4 of the Complaint, Defendant admits the allegation of  
14 this paragraph.

15 5. With respect to Paragraph 5 of the Complaint, Defendant is unable to admit or  
16 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
17 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
18 material factual allegations, but rather argument. As such, the averments of this paragraph are  
19 denied.  
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21 6. With respect to Paragraph 6 of the Complaint, Defendant is unable to admit or  
22 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
23 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
24 material factual allegations, but rather argument. As such, the averments of this paragraph are  
25 denied.

26 7. With respect to Paragraph 7 of the Complaint, Defendant is unable to admit or  
27 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
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1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied. However, based upon that information currently available, Defendant admits that  
4 Plaintiff PATRICK CONNALLY attended a mediation on or about March 20, 2007, which took  
5 place at the Subject Property.

6 8. With respect to Paragraph 8 of the Complaint, Defendant is unable to admit or  
7 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
8 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
9 material factual allegations, but rather argument. As such, the averments of this paragraph are  
10 denied. However, based upon that information currently available, Defendant admits that at least  
11 part of the Subject Property qualifies as a public accommodation and/or public facility.

12 Defendant admits that it is the "owner and operator, lessor and/or lessees, or agent of the owner,  
13 lessor and/or/ lessees, or agents of the owners, lessors and /or lessees" of the Subject Property.

14 9. With respect to Paragraph 9 of the Complaint, Defendant is unable to admit or  
15 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
16 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
17 material factual allegations, but rather argument. As such, the averments of this paragraph are  
18 denied. However, based upon that information currently available, Defendant admits that at least  
19 part of the Subject Property qualifies as a public accommodation and/or public facility.

20 Defendant admits that it is the "owner and operator, lessor and/or lessees, or agent of the owner,  
21 lessor and/or/ lessees, or agents of the owners, lessors and /or lessees" of the Subject Property.

22 10. With respect to Paragraph 10 of the Complaint, Defendant denies this paragraph  
23 as phrased.

24 11. With respect to Paragraph 11 of the Complaint, Defendant is unable to admit or  
25 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
26 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
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1 material factual allegations, but rather argument. As such, the averments of this paragraph are  
2 denied. However, based upon that information currently available, Defendant admits that at least  
3 part of the Subject Property qualifies as a public accommodation and/or public facility.

4 12. With respect to Paragraph 12 of the Complaint, Defendant is unable to admit or  
5 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
6 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
7 material factual allegations, but rather argument. As such, the averments of this paragraph are  
8 denied.

9 13. With respect to Paragraph 13 of the Complaint, Defendant is unable to admit or  
10 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
11 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
12 material factual allegations, but rather argument. As such, the averments of this paragraph are  
13 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
14 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
15 at the Subject Property.

16 14. With respect to Paragraph 14 of the Complaint, Defendant is unable to admit or  
17 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
18 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
19 material factual allegations, but rather argument. As such, the averments of this paragraph are  
20 denied. However, Defendant admits that Plaintiff PATRICK CONNALLY attended a mediation  
21 on or about March 20, 2007, which took place at the Subject Property.

22 15. With respect to Paragraph 15 of the Complaint, Defendant is unable to admit or  
23 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
24 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
25 material factual allegations, but rather argument. As such, the averments of this paragraph are  
26 denied.  
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1           16. With respect to Paragraph 16 of the Complaint, Defendant is unable to admit or  
2 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
3 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
4 material factual allegations, but rather argument. As such, the averments of this paragraph are  
5 denied.

6           17. With respect to Paragraph 17 of the Complaint, Defendant is unable to admit or  
7 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
8 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
9 material factual allegations, but rather argument. As such, the averments of this paragraph are  
10 denied.

11           18. With respect to Paragraph 18 of the Complaint, Defendant is unable to admit or  
12 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
13 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
14 material factual allegations, but rather argument. As such, the averments of this paragraph are  
15 denied.

16           19. With respect to Paragraph 19 of the Complaint, Defendant is unable to admit or  
17 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
18 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
19 material factual allegations, but rather argument. As such, the averments of this paragraph are  
20 denied.

21           20. With respect to Paragraph 20 of the Complaint, Defendant is unable to admit or  
22 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
23 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
24 material factual allegations, but rather argument. As such, the averments of this paragraph are  
25 denied.  
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1           21. With respect to Paragraph 21 of the Complaint, Defendant is unable to admit or  
2 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
3 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
4 material factual allegations, but rather argument. As such, the averments of this paragraph are  
5 denied.

6           22. With respect to Paragraph 22 of the Complaint, Defendant is unable to admit or  
7 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
8 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
9 material factual allegations, but rather argument. As such, the averments of this paragraph are  
10 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
11 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
12 at the Subject Property.

13           23. With respect to Paragraph 23 of the Complaint, Defendant is unable to admit or  
14 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
15 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
16 material factual allegations, but rather argument. As such, the averments of this paragraph are  
17 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
18 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
19 at the Subject Property.

20           24. With respect to Paragraph 24 of the Complaint, Defendant is unable to admit or  
21 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
22 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
23 material factual allegations, but rather argument. As such, the averments of this paragraph are  
24 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
25 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
26 at the Subject Property.  
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1           25. With respect to Paragraph 25 of the Complaint, Plaintiffs have failed to include  
2 any allegations in this paragraph.

3           26. With respect to Paragraph 26 of the Complaint, Defendant is unable to admit or  
4 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
5 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
6 material factual allegations, but rather argument. As such, the averments of this paragraph are  
7 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
8 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
9 at the Subject Property.

10           27. With respect to Paragraph 27 of the Complaint, Defendant is unable to admit or  
11 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
12 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
13 material factual allegations, but rather argument. As such, the averments of this paragraph are  
14 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
15 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
16 at the Subject Property.

17           28. With respect to Paragraph 28 of the Complaint, Defendant is unable to admit or  
18 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
19 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
20 material factual allegations, but rather argument. As such, the averments of this paragraph are  
21 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
22 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
23 at the Subject Property.

24           29. With respect to Paragraph 29 of the Complaint, Defendant is unable to admit or  
25 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
26 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
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1 material factual allegations, but rather argument. As such, the averments of this paragraph are  
2 denied.

3 30. With respect to Paragraph 30 of the Complaint, Defendant is unable to admit or  
4 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
5 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
6 material factual allegations, but rather argument. As such, the averments of this paragraph are  
7 denied. Defendant specifically denies the allegation that Plaintiff PATRICK CONNALLY has  
8 any intention of ever returning to the Subject Property in the future.

9 31. With respect to Paragraph 31 of the Complaint, Defendant is unable to admit or  
10 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
11 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
12 material factual allegations, but rather argument. As such, the averments of this paragraph are  
13 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
14 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
15 at the Subject Property.

16 32. With respect to Paragraph 32 of the Complaint, Defendant is unable to admit or  
17 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
18 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
19 material factual allegations, but rather argument. As such, the averments of this paragraph are  
20 denied.

21 33. With respect to Paragraph 33 of the Complaint, Defendant is unable to admit or  
22 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
23 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
24 material factual allegations, but rather argument. As such, the averments of this paragraph are  
25 denied. Defendant specifically denies the allegations of actual or implied malice toward  
26 Plaintiffs, and denies the allegation of despicable conduct carried out with a willful and  
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1 conscious disregard for the rights and safety of plaintiffs and other similarly situated persons.  
2 Defendant has, at all relevant times, believed that the Subject Property is handicap accessible.  
3 Defendant is currently evaluating whether there are any genuine accessibility issues at the  
4 Subject Property.

5       34. With respect to Paragraph 34 of the Complaint, Defendant is unable to admit or  
6 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
7 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
8 material factual allegations, but rather argument. As such, the averments of this paragraph are  
9 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
10 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
11 at the Subject Property.

12       35. With respect to Paragraph 35 of the Complaint, Defendant is unable to admit or  
13 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
14 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
15 material factual allegations, but rather argument. As such, the averments of this paragraph are  
16 denied. Defendant specifically denies the allegations of any conscious disregard for the rights of  
17 plaintiffs and other persons with physical disabilities. Defendant has, at all relevant times,  
18 believed that the Subject Property is handicap accessible. Defendant is currently evaluating  
19 whether there are any genuine accessibility issues at the Subject Property.  
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21       36. With respect to Paragraph 36 of the Complaint, Defendant is unable to admit or  
22 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
23 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
24 material factual allegations, but rather argument. As such, the averments of this paragraph are  
25 denied. Defendant specifically denies the allegation that Plaintiff PATRICK CONNALLY has  
26 any intention of ever returning to the Subject Property in the future.  
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37. With respect to Paragraph 37 of the Complaint, In as much as this paragraph re-  
pleads all allegations contained in paragraphs 1 through 36 of the Complaint, responding party  
answers this Complaint by incorporating by this reference its specific response to each of the  
referenced paragraphs.

38. With respect to Paragraph 38 of the Complaint, The allegations set forth in this  
paragraph do not purport to identify any fact within the knowledge responding party that could  
be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
to which responding party can neither admit nor deny.

39. With respect to Paragraph 39 of the Complaint, The allegations set forth in this  
paragraph do not purport to identify any fact within the knowledge responding party that could  
be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
to which responding party can neither admit nor deny.

40. With respect to Paragraph 40 of the Complaint, The allegations set forth in this  
paragraph do not purport to identify any fact within the knowledge responding party that could  
be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
to which responding party can neither admit nor deny.

41. With respect to Paragraph 41 of the Complaint, The allegations set forth in this  
paragraph do not purport to identify any fact within the knowledge responding party that could  
be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
to which responding party can neither admit nor deny.

42. With respect to Paragraph 42 of the Complaint, The allegations set forth in this  
paragraph do not purport to identify any fact within the knowledge responding party that could  
be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
to which responding party can neither admit nor deny.

43. With respect to Paragraph 43 of the Complaint, Defendant is unable to admit or  
deny the averments set forth in this paragraph as it lacks sufficient information to allow the

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1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied.

4 44. With respect to Paragraph 44 of the Complaint, Defendant is unable to admit or  
5 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
6 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
7 material factual allegations, but rather argument. As such, the averments of this paragraph are  
8 denied.

9 45. With respect to Paragraph 45 of the Complaint, Defendant is unable to admit or  
10 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
11 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
12 material factual allegations, but rather argument. As such, the averments of this paragraph are  
13 denied.

14 46. With respect to Paragraph 46 of the Complaint, Defendant is unable to admit or  
15 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
16 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
17 material factual allegations, but rather argument. As such, the averments of this paragraph are  
18 denied.

19 47. With respect to Paragraph 47 of the Complaint, Defendant is unable to admit or  
20 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
21 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
22 material factual allegations, but rather argument. As such, the averments of this paragraph are  
23 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
24 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
25 at the Subject Property. Defendant specifically denies the allegation that Plaintiff PATRICK  
26 CONNALLY has any intention of ever returning to the Subject Property in the future.  
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1           48. With respect to Paragraph 48 of the Complaint, Defendant is unable to admit or  
2 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
3 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
4 material factual allegations, but rather argument. As such, the averments of this paragraph are  
5 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
6 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
7 at the Subject Property. Defendant specifically denies the allegation that Plaintiff PATRICK  
8 CONNALLY has any intention of ever returning to the Subject Property in the future.

9           49. With respect to Paragraph 49 of the Complaint, In as much as this paragraph re-  
10 pleads all allegations contained in paragraphs 1 through 48 of the Complaint, responding party  
11 answers this complaint by incorporating by this reference its specific response to each of the  
12 referenced paragraphs.

13           50. With respect to Paragraph 50 of the Complaint, The allegations set forth in this  
14 paragraph do not purport to identify any fact within the knowledge responding party that could  
15 be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
16 to which responding party can neither admit nor deny.

17           51. With respect to Paragraph 51 of the Complaint, The allegations set forth in this  
18 paragraph do not purport to identify any fact within the knowledge responding party that could  
19 be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
20 to which responding party can neither admit nor deny.

21           52. With respect to Paragraph 52 of the Complaint, The allegations set forth in this  
22 paragraph do not purport to identify any fact within the knowledge responding party that could  
23 be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
24 to which responding party can neither admit nor deny.

25           53. With respect to Paragraph 53 of the Complaint, Defendant is unable to admit or  
26 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
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1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
4 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
5 at the Subject Property.

6 54. With respect to Paragraph 54 of the Complaint, Defendant is unable to admit or  
7 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
8 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
9 material factual allegations, but rather argument. As such, the averments of this paragraph are  
10 denied.

11 55. With respect to Paragraph 55 of the Complaint, Defendant is unable to admit or  
12 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
13 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
14 material factual allegations, but rather argument. As such, the averments of this paragraph are  
15 denied.

16 56. With respect to Paragraph 56 of the Complaint, Defendant is unable to admit or  
17 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
18 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
19 material factual allegations, but rather argument. As such, the averments of this paragraph are  
20 denied.

21 57. With respect to Paragraph 57 of the Complaint, Defendant is unable to admit or  
22 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
23 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
24 material factual allegations, but rather argument. As such, the averments of this paragraph are  
25 denied.  
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1           58. With respect to Paragraph 58 of the Complaint, In as much as this paragraph re-  
2 pleads all allegations contained in paragraphs 1 through 57 of the Complaint, responding party  
3 answers this Complaint by incorporating by this reference its specific response to each of the  
4 referenced paragraphs.

5           59. With respect to Paragraph 59 of the Complaint, The allegations set forth in this  
6 paragraph do not purport to identify any fact within the knowledge responding party that could  
7 be either admitted or denied. Rather, the averments of this paragraph are merely legal arguments  
8 to which responding party can neither admit nor deny.

9           60. With respect to Paragraph 60 of the Complaint, Defendant is unable to admit or  
10 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
11 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
12 material factual allegations, but rather argument. As such, the averments of this paragraph are  
13 denied.

14           61. With respect to Paragraph 61 of the Complaint, Defendant is unable to admit or  
15 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
16 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
17 material factual allegations, but rather argument. As such, the averments of this paragraph are  
18 denied.

19           62. With respect to Paragraph 62 of the Complaint, Defendant is unable to admit or  
20 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
21 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
22 material factual allegations, but rather argument. As such, the averments of this paragraph are  
23 denied. However, based upon that information currently available, Defendant admits that at least  
24 part of the Subject Property qualifies as a public accommodation and/or public facility.

25           63. With respect to Paragraph 63 of the Complaint, Defendant is unable to admit or  
26 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
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1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied.

4 64. With respect to Paragraph 64 of the Complaint, Defendant is unable to admit or  
5 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
6 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
7 material factual allegations, but rather argument. As such, the averments of this paragraph are  
8 denied.

9 65. With respect to Paragraph 65 of the Complaint, Defendant is unable to admit or  
10 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
11 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
12 material factual allegations, but rather argument. As such, the averments of this paragraph are  
13 denied.

14 66. With respect to Paragraph 66 of the Complaint, In as much as this paragraph re-  
15 pleads all allegations contained in paragraphs 1 through 65 of the Complaint, responding party  
16 answers this Complaint by incorporating by this reference its specific response to each of the  
17 referenced paragraphs.

18 67. With respect to Paragraph 67 of the Complaint, Defendant is unable to admit or  
19 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
20 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
21 material factual allegations, but rather argument. As such, the averments of this paragraph are  
22 denied. Defendant has, at all relevant times, believed that the Subject Property is handicap  
23 accessible. Defendant is currently evaluating whether there are any genuine accessibility issues  
24 at the Subject Property.

25 68. With respect to Paragraph 68 of the Complaint, Defendant is unable to admit or  
26 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
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1 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
2 material factual allegations, but rather argument. As such, the averments of this paragraph are  
3 denied.

4 69. With respect to Paragraph 69 of the Complaint, Defendant is unable to admit or  
5 deny the averments set forth in this paragraph as it lacks sufficient information to allow the  
6 averments to be admitted or denied, and the averments set forth in this paragraph do not set forth  
7 material factual allegations, but rather argument. As such, the averments of this paragraph are  
8 denied.

9 70. With respect to Paragraph 70 of the Complaint, Defendant denies the allegations  
10 of this paragraph.

11 **AFFIRMATIVE DEFENSES**

12 1. Plaintiffs' Complaint and each cause of action therein is barred and/or limited on  
13 the ground that plaintiffs failed to provide notice to Defendant and an opportunity to cure any  
14 deficiencies, if any there were.

15 2. The accommodations, many of which are unspecified in Plaintiffs' Complaint, are  
16 not readily achievable by Defendant.

17 3. Plaintiffs have failed to state facts sufficient to constitute any cause of action  
18 against Defendant.

19 4. Plaintiffs' Complaint, and each cause of action therein, fails to state facts  
20 sufficient to entitle Plaintiffs to an award of damages.

21 5. Plaintiffs' Complaint, and each cause of action therein, is barred by the equitable  
22 doctrine of unclean hands.

23 6. Plaintiffs and their counsel have engaged in a pattern of unethical behavior  
24 designed ultimately to extort money from businesses and their insurers.

25 7. Plaintiffs' Complaint was filed for an improper purpose.

26 8. Plaintiffs' Complaint was filed with the intent to harrass.  
27  
28

9. Plaintiffs are guilty of unfair business and deceptive trade practices.

10. California Health and Safety Code §19955 does not provide for a private cause of action by Plaintiffs, nor does it provide for any damages or relief as requested by Plaintiffs in their Complaint.

11. Plaintiffs' Complaint fails to state facts sufficient to establish that Plaintiff PATRICK CONNALLY has standing to bring the present action for injunctive relief claimed therein.

12. Plaintiffs' Complaint, and each cause of action therein, fails to state facts sufficient to entitle Plaintiffs to an award of damages.

13. Plaintiffs' Complaint, and each cause of action therein, fails to state facts sufficient to entitle Plaintiffs to an award of treble damages, exemplary damages, or punitive damages.

14. Plaintiffs are not entitled to punitive damages as a matter of law because the award of such damages violates Defendant's rights of due process as set forth in the 14<sup>th</sup> Amendment to the United States Constitution and/or Article I, Section 7(a) of the Constitution of the State of California, in that the statute authorizing punitive damage fails to set standards to guide the trier of fact in determining the type of conduct subject to punitive damages or the amount of punishment to be handed out for particular conduct.

15. Plaintiffs are not entitled to punitive damages as a matter of law because the award of such damages constitutes an excessive fine prohibited by the Excessive Fines Clause in the 8<sup>th</sup> Amendment to the United States Constitution and/or Article 1, Section 17 of the Constitution of the State of California.

16. Plaintiffs are not entitled to punitive damages as a matter of law because the award of such damages violates Defendant's right to Equal Protection of the law under the 14<sup>th</sup> Amendment of the United States Constitution and/or Article I, Section (a) of the Constitution of

1 the State of California, in that, as applied, an award of punitive damages in this case would  
2 disproportionately penalize Defendant and not others for the same offense.

3 17. Plaintiffs' Complaint and each cause of action therein is barred by mootness.

4 18. Plaintiffs' state law causes of action are barred by a lack of supplemental  
5 jurisdiction.

6 19. Plaintiffs' Complaint fails to state facts sufficient to establish that Plaintiff  
7 DREES has standing to bring the present lawsuit and the relief claimed therein. Defendant  
8 contends that DREES exists as a tool to lend an "aura of legitimacy" to predatory litigation, as  
9 part of a strategy to prompt settlement.

10 20. Defendant has not had sufficient time to review all documents and factual  
11 circumstances which relate to this matter in order to ascertain every potential affirmative defense  
12 available to it. Therefore, Defendant reserves the right to add additional affirmative defenses  
13 or amend those already asserted as additional facts and information become known.

14  
15 **WHEREFORE**, Defendant prays that Plaintiffs take nothing by their Complaint, for  
16 costs of suit herein, and for such other and further relief as the Court may deem reasonable and  
17 proper.

18 Dated: August 27, 2007

BRANSON, BRINKOP, GRIFFITH & STRONG

19  
20 By:

  
JOHN R. CAMPO

Attorneys for Above-Named Defendant

21  
22 **DEMAND FOR JURY TRIAL**

23 Defendant BAYPORT MARINA PLAZA LLC hereby requests a trial by jury.

24 Dated: August 27, 2007

BRANSON, BRINKOP, GRIFFITH & STRONG

25  
26  
27 By:

  
JOHN R. CAMPO

Attorneys for Above-Named Defendant